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14 **UNITED STATES DISTRICT COURT**
15 **EASTERN DISTRICT OF WASHINGTON**

16 MARK A. HOLUM, an individual,

17 Plaintiff,

18 v.

19 EXTENDICARE HOMES, INC., a
20 corporation; EXTENDICARE
21 HEALTH SERVICES, INC., a
22 corporation; and EXTENDICARE
23 HEALTH FACILITIES, INC., a
24 corporation,

25 Defendants.

No. CV-08-081-EFS

PLAINTIFF'S LR 56.1(b)
STATEMENT OF FACTS

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28 PLAINTIFF'S STATEMENT OF FACTS - 1

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1 Plaintiff, by and through his undersigned attorneys, submits the following
2 LR 56.1(b) Statement of Facts.
3

4 1. Plaintiff MARK HOLUM was and is a Registered Nurse in the State
5 of Washington. (Declaration of Mark Holum at p. 2, ¶3.)
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7 2. On November 30, 2004, Plaintiff was employed by Defendant
8 Extendicare Homes, Inc. at a facility known as the "Gardens". (Declaration of
9 Mark Holum at p. 2, ¶4.)
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11 3. On November 17, 2004, T. H., a developmentally delayed 37-year-old
12 male was admitted to the Gardens where Mark Holum was employed.
13 (Declaration of Sue Goodrick at p. 2, ¶3). T. H. was admitted with a diagnosis of
14 Developmental Delays, Bipolar Disorder (manic-depression), Depression and
15 Anxiety, recurrent aspiration pneumonia, cerebral palsy, and recent gastrotomy
16 tube placement (Declaration of Sincerie Arnold, at p.2, ¶4; Declaration of Sue
17 Goodrick at pp. 2-3, ¶7).
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21 4. Before T. H. was admitted, the Director of Administration for
22 Extendicare, Greg Calvert, and the Director of Nursing for the Gardens were
23 advised repeatedly by nursing staff that residents with mental illnesses were not
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1 suitable residents at the Gardens for multiple professional reasons. (Declaration of
2 Sincerie Arnold, at pp. 3-4, ¶11.)

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4 5. Before T.H. was admitted the Extendicare Administration was
5 specifically told of T. H.'s assaultive behavior and the inability of a group home
6 staff to control his behavior. (Declaration of Michelle Rashka, p. 4 ¶13.)

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8 6. The nursing staff of the Gardens was not trained in providing care to
9 mentally ill individuals. The Gardens' nursing staff did not have the training in
10 psychiatric nursing to provide day-to-day care to individuals who had dual
11 diagnoses of mental retardation and mental illness. (Declaration of Sincerie
12 Arnold, at p. 4, ¶12; ¶13.)

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14 7. Whenever the staff of the Gardens expressed concerns about being
15 able to provide care to patients with mental illnesses, including, but not limited to,
16 addressing the safety of other residents and staff, the Extendicare administration
17 made it clear that it was in their economic interest to fill the facility's beds with
18 residents no matter what the risk to the other residents and staff. (Declaration of
19 Sincerie Arnold, at pp. 5-6, ¶18; also, Declaration of Michelle Rashka, p. 4, ¶13.)

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21 8. T. H. was an individual with the dual admission diagnosis of mental
22 retardation and mental illness. The Extendicare administration knew that T. H.

1 had both mental retardation and mental illness before he was admitted to the
2 Gardens on November 17, 2004, and when he was allowed back from the Sacred
3 Heart Emergency Room on November 29, 2004. (Declaration of Sincerie Arnold,
4 at p. 6, ¶22.) T.H. was a greater problem because of his dual diagnosis of mental
5 retardation and mental illness. (Declaration of Sincerie Arnold at p. 7 ¶ 24.)
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8 9. According to an Extendicare policy and procedure the dual diagnosis
9 of mental retardation and mental illness were matters that required specific
10 consideration as to whether the safety of other residents and the staff was assured.
11 (Declaration of Sincerie Arnold Ex. P-1 at p. 25, 27) Extendicare recognized it had
12 a “responsibility to ensure that proper care is provided”, *e.g.*, presumably nurses
13 with psychiatric training, education and skill in managing patients with mental
14 illness that would implicate concerns for the safety of other residents and staff.
15 (Declaration of Sincerie Arnold, at p. 8-9 ¶26(c), p. 6 ¶22, Ex. P-1.)
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20 10. The yellow flag (light) considerations of the Extendicare were
21 required to be addressed before T. H.’s admission and certainly before he was
22 allowed to remain in The Gardens on November 29th. (Declaration of Sincerie
23 Arnold pp. 7-8, ¶26, ¶27.
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1 11. By November 26, 2004, and again on November 29, 2004, the
2 Gardens neither had trained staff nor sufficient staff to provide safe and adequate
3 care to T. H. who was both mentally retarded and mentally ill. The Gardens had a
4 history of safety problems with prior residents who were mentally ill or improperly
5 allowed to be residents at the Gardens. (Declaration of Sincerie Arnold, at p. 7,
6 ¶24, p. 14 ¶45, and also Declaration of Mark A. Holum, p. 2, ¶5.)
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9 12. Days before November 29, 2004, the Extendicare administrative
10 director knew that because of the verbal and written concerns that he had received
11 from nurses and staff at the Gardens, that T. H. was uncontrollable by the staff at
12 the Gardens. (Declaration of Sincerie Arnold, at p. 7, ¶25, p. 45, and also
13 Declaration of Michelle Rashka, p. 4 ¶13 and also p. 2 ¶7, p. 3 ¶¶8-9.)
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17 13. The administration at the Gardens knew that T. H. was a known
18 danger to other residents and staff because the administration had been advised of
19 nursing staff's specific concerns about T. H. as a resident. (Declaration of
20 Sincerie Arnold, at p. 11, ¶34, p. 14 ¶45; Declaration of Sue Goodrick, p. 4 ¶12; p.
21 6 ¶12; Declaration of Michelle Rashka, p. 4 ¶13 and also p. 2 ¶7, p. 3 ¶¶8-9.)
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24 14. On November 29, 2004, T. H. should not have been allowed to return
25 to the Gardens from Sacred Heart Medical Center when staff had been physically
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1 assaulted by T. H. who was mentally retarded and mentally ill. Given T. H.'s
2 respiratory status with excessive respiratory secretions, which lowered his oxygen
3 levels, further compromising T. H.'s already severely compromised mental
4 functioning and state, he should not have been allowed back into the Gardens on
5 November 29, 2004. (Declaration of Sincerie Arnold, at p. 11, ¶35; and
6 Declaration of Sue Goodrick at p. 4 ¶12, p. 5 ¶16, ¶18, p. 6 ¶19, ¶20.)
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10 15. Nurse Sincerie Arnold specifically stated in her Declaration that Greg
11 Calvert's testimony "the progress notes of Mr. T. H.'s' care from his admittance
12 on November 17, 2004 to November 29, 2004, showed no incidents of violence, or
13 psychotic episodes" are untrue. (Declaration of Sincerie Arnold, at p. 14, ¶42.)
14 Before T. H. was admitted, Michelle Rashka, CNA, warned the Extendicare
15 Administration that T. H. was violent and had assaulted the staff of the prior
16 Group Home, *e.g.*, "T. H. was tackling and push the staff up against or across the
17 furniture in the home". (Declaration of Michelle Rashka, p. 3 ¶8, p. 4 ¶13.
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21 16. Additionally, Nurse Sincerie Arnold identified where T. H.'s records
22 specifically identified that T. H. was mentally deteriorating because of the over-
23 stimulation of the Extendicare nursing home environment. (Declaration of
24 Sincerie Arnold at p. 9-10, ¶30, ¶31, Ex P-2 at pp. 28, 29, 31. The deterioration of
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1 T.H. was noted in the Medicare Certification of funding assessment tool (MDS).
2 (Declaration of Sincerie Arnold at p. 10 ¶ 31. Before November 29, the
3 Administration was notified at multiple times and by multiple means that T.H. was
4 a danger to the residents and staff. (Declaration of Sincerie Arnold at p. 7 ¶ 23, ¶
5 24).
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8 17. T. H. assaulted a member of the kitchen staff at the Gardens who was
9 attempting to provide one-on-one care to T. H. before November 26, 2004.
10 (Declaration of Sincerie Arnold, at p. 14, ¶43.)
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12 18. The Director of Nursing and the Administrative Director at the
13 Gardens were advised of T. H.'s pre-November 26th assault. (Declaration of
14 Sincerie Arnold, at p. 14, ¶44.)
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17 19. On multiple occasions before November 29, 2004, the Director of
18 Nursing and the Administrative Director at the Gardens were told that T. H. was
19 going to hurt someone and that T. H. needed to be removed from the Gardens
20 facility before someone was seriously hurt. (Declaration of Sue Goodrick, pp. 5-6
21 ¶18.) The warnings to the administration at the Gardens were supported by the
22 fact that the Gardens neither had sufficient staff nor trained staff to deal with a
23 patient such as T. H. who was both mentally retarded and had mental illness.
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1 (Declaration of Sincerie Arnold, at p. 12 ¶37, ¶38, p. 14, ¶45.) From November
2 28, 2004, to the morning of November 29, 2004, T. H. mentally deteriorated to the
3 point that he was manifesting psychotic behavior by increasing demands for
4 attention, agitation, constant verbalization and movements. T. H. had been up for
5 48 hours which was an indication that T. H. was in a manic phase of his bipolar
6 mental illness and was psychotic. (Declaration of Sincerie Arnold, at p. 15, ¶48.)
7
8 T.H. had deteriorated to the point that Extendicare staff could no longer control T.
9
10 H.'s behavior. (Declaration of Sue Goodrick at p. 3, ¶8).

11
12 20. On the morning of November 29, 2004, T. H. had deterioration in his
13 respiratory status and had increased oral secretion. (Declaration of Sue Goodrick
14 at p. 3 ¶8) As such, staff at the Gardens was facing more danger because T. H. had
15 to be suctioned more frequently to keep him from developing pneumonia.
16
17 (Declaration of Sincerie Arnold, at p. 16, ¶50.) T. H. probably had deliriums
18 because of his compromised respiratory status. (Declaration of Sue Goodrick at p.
19 5, ¶18.) By November 29, T. H. had deteriorated to a psychotic state that
20 presented a danger to the safety of the other residents and staff. (Declaration of
21 Sincerie Arnold, p. 15 ¶21.)
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1 21. On the morning of November 29, 2004, T. H. was taken by
2 ambulance to the Emergency Room at Sacred Heart Medical Center for both
3 increased respiratory secretions and increasing behavior. (Declaration of Sincerie
4 Arnold, at p. 16, ¶52, Ex. P-2 p. 21 ; Declaration of Sue Goodrick at p. 3, ¶8, ¶9).

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6 22. The Emergency Department notes from Sacred Heart Medical Center
7 on November 29, 2004, showed that T. H. had to be restrained in a Posey belt to
8 control him in the Emergency Room. (Declaration of Sincerie Arnold, at p. 17,
9 ¶53; Ex. P-5 at p. 45; Declaration of Sue Goodrick, p. 5 ¶16.)
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11
12 23. Under federal and state law, a residential facility such as the Gardens
13 cannot take a resident into the facility and immediately place a resident in a
14 physical restraint, such as a Posey belt. (Declaration of Sincerie Arnold, at
15 p. 17, ¶54¹;))
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18 24. The Extendicare Administrative Director knew that the Gardens could
19 not lawfully, immediately, and continuously confine T. H. by use of a Posey
20 restraint on November 29, 2004. In this regard, the Extendicare administration
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26 ¹ Under the federal regulations of nursing homes and skilled nursing facilities, residents had the right to be free from
27 any physical or chemical restraints imposed for discipline or conveniences, and not required to treat resident's

1 knew that T. H. could not be discharged from Sacred Heart Medical Center and
2 then be immediately placed in a Posey restraint at the Gardens in order to prevent
3 him from injuring residents and staff. (Declaration of Sincerie Arnold, at pp. 17-
4 18, ¶56;.)

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6 25. On November 29, 2004, the nursing assessment at the Gardens
7 concluded that T. H. had previously assaulted an untrained kitchen staff trying to
8 work with T. H. on a one-on-one basis and by November 29, 2004, T. H. could no
9 longer be controlled by the nursing staff. The nursing assessment was that T. H.
10 had to be removed from the Gardens because he was going to harm another
11 person. (Declaration of Sue Goodrick, p. 5-6 ¶18; Declaration of Sincerie Arnold,
12 p. 12 ¶38, p. 14 ¶45.) The nursing assessment showed that the Gardens had
13 neither the resources nor the staff to stop T. H. from assaulting others.
14 (Declaration of Sincerie Arnold, at p. 18, ¶57 and also p. 12 ¶37.)
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20 26. T. H. received no treatment at Sacred Heart Medical Center on
21 November 29, 2004 for his dangerous and unmanageable behavior. (Declaration
22 of Sue Goodrick at p. 5 ¶18). On November 29th, the Acting Administrative
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26 medical symptoms. *E.g.*, 42 CFR ¶483.13 F-Tag 221. Placing physical restraints on T. H. would not be treatment of
27 Bipolar psychosis or his mental retardation.

1 Director of the Gardens had the authority to tell the hospital that T.H. could not be
2 returned to the Gardens. (Declaration of Sue Goodrick at p. 5 ¶17.)

3
4 27. On November 29, 2004, the nursing staff told the Director of Nursing
5 and Administrative Director at the Gardens that T. H. was not a suitable resident
6 for the Gardens and that T. H. was going to harm others. (Declaration of Sincerie
7 Arnold, at p. 18, ¶58; and also Declaration of Sue Goodrick at p. 4 ¶¶11, 12.)
8 After T.H. returned Nurse Goodrick made multiple attempts to get a Mental Health
9 Professional to come to the Gardens to declare T.H. psychotic, so he would be
10 removed by law to another facility. (Declaration Sue Goodrick at p. 4-5 ¶ 15, Ex.
11 P-6 at p. 16. Declaration of Sincerie Arnold Ex. P-4 at p. 41)

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15 28. Nurse Sue Goodrick notified the Administrative Director and notified
16 the Director of Nursing of the out-of-control behavior of T. H. and that, based
17 upon the nursing assessments, T. H. was going to hurt himself or others.
18 (Declaration of Sue Goodrick at p. 4, ¶12).

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20
21 29. On November 29, 2004, after the Director of Nursing and
22 Administrative Director allowed T. H. back into the Gardens from Sacred Heart
23 Medical Center, T. H. engaged in multiple physical assaults on the staff. T. H.
24 was observed and documented to be in a psychotic state at 4:30 p.m. and 6:45 p.m.
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1 during the evening shift on November 29th. (Declaration of Sincerie Arnold, at p.
2 18, ¶59.) The night of November 29 into the early morning of November 30, after
3 being up for more than 48 hours, T.H. slept. (Declaration of Sincerie Arnold Ex.
4 P-2 at p 39.)
5

6 30. T. H. should have been removed from the Gardens on
7 November 29, 2004, when he began assaulting others. A psychotic ambulatory,
8 mentally retarded 37-year-old male in a residential extended care facility such as
9 the Gardens will harm others. (Declaration of Sincerie Arnold, at pp. 18-19, ¶60,
10 ¶61; and also Declaration of Sue Goodrick at p. 6 ¶19, 20.)
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14 31. The administration at Extendicare intended to completely disregard
15 the safety of other residents and staff because the only response they made to
16 repeated professional concerns by staff regarding the admission and discharge of
17 mentally ill residents was to either “shut-up” or the “concerned” staff would be out
18 of a job. (Declaration of Sincerie Arnold, at p. 19, ¶63, ¶64; and also Declaration
19 of Michelle Rashka p. 4 ¶ 13.)
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23 32. It was certain that T. H. would become violent and would in fact
24 assault other people at the time he was readmitted to the Gardens on November 29,
25 2004. (Declaration of Sue Goodrick at p. 6, ¶19)
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1 33. T. H. was readmitted to the Gardens on November 29, 2004. No
2 changes were made to his care, so T. H. continued to be a danger to others.
3
4 (Declaration of Sue Goodrick at pp. 5-6, ¶18)

5 34. On November 30, 2004, before 9:00 a.m. T. H. violently assaulted
6 Plaintiff MARK HOLUM as Mr. Holum. As a result of this violent attack,
7 Plaintiff MARK HOLUM was severely injured. (Declaration of Mark Holum at
8 pp. 4-5 ¶12, ¶13, ¶14, ¶15. (Declaration of Sincerie Arnold Ex P-2 p. 37 notation
9 to transport signed at 9:10 a.m.)
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12 35. In less than an hour of the November 30, 2004, assault, T.H. was
13 discharged from the Gardens. (Declaration of Sincerie Arnold Ex. P-2 pp. 37, 39.)
14

15 DATED this 7th day of January, 2009.
16

17 DAWSON & MEADE

18 By: 
19

20 MARCIA M. MEADE, WSBA# 11122
21 Co-Counsel for Plaintiff

22 FELTMAN, GEBHARDT,
23 GREER & ZEIMANTZ, P.S.

24 By: 
25

26 ROBERT F. GREER, WSBA# 15619
27 Co-Counsel for Plaintiff

CERTIFICATE OF SERVICE

I, Karen S. Brasefield, am a citizen of the United States and a resident of the State of Washington; I am over the age of eighteen (18) years; I am competent to be a witness in a court of law, and I am not a party to the within action.

The undersigned certifies under penalty of perjury under the laws of the State of Washington, that on the 9TH day of January, 2009, the foregoing document was delivered to the following person(s) in the manner indicated:

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